



January 23, 2002

Mr. James L. Anderson, Jr.  
County Attorney  
Aransas County  
301 North Live Oak Street  
Rockport, Texas 78382

OR2002-0335

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157963.

The County Clerk of Aransas County (the "county") received a request for "a description of the form in which the election voting history database . . . is kept electronically" by the clerk's office. You claim that the requested information is excepted from disclosure under section 552.110 of the Government Code. You inform us that you have notified the third party whose proprietary interests may be implicated by the request. *See* Gov't Code §552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). As of the date of this letter, we have received comments from the third party you notified. We have considered the exception claimed.<sup>1</sup> We have also considered comments submitted to this office by the requestor. Gov't Code §552.304.

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<sup>1</sup>We note that Apollo Software, Inc. claims an exception to the disclosure of the application software product, "including the source code, object code, screen layouts, record layouts, system design, etc.," that was developed by Apollo and licensed to the county. The county did not submit this information to this office, however, and therefore this ruling does not address that information.

We note that the requestor asks a series of factual questions. You indicate that the county does not have information which would address these questions. Although a governmental body must make a good faith effort to relate a request to information which it holds, the Public Information Act (the "Act") does not require a governmental body to answer factual questions or to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 561 (1990), 555 (1990). Moreover, this office has concluded that the Act does not require a governmental body to prepare new information in response to a request. *See, e.g.*, Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Thus, we conclude that while the county must make a good faith effort to relate the request to information which it holds, the Act does not require the county to answer factual questions or to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 561 (1990), 555 (1990).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 157963

Enc. Submitted documents

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